IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN H. SZABO	:	**CIVIL ACTION**
Plaintiff,	:	
	:	
vs.	:	**NO. 05-4390**
	:	
CSX TRANSPORTATION, INC.	:	
Defendant.	:	

ORDER AND MEMORANDUM

O R D E R

AND NOW, this 1st day of February, 2006, upon consideration of defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. 1404(a) Change of Venue (Document No. 7, filed January 11, 2006) and plaintiff's Response in Opposition to Defendant's Motion to Transfer Venue (Document No. 8, filed January 23, 2006), **IT IS ORDERED**, for the reasons set forth in the attached memorandum, that defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. 1404(a) Change of Venue is **DENIED**.

MEMORANDUM

Plaintiff Alan H. Szabo, a resident of Bay Village, Ohio, has filed suit against defendants CSX Transportation, Inc. and Consolidated Rail Corporation, his former employers. Compl. ¶¶ 1-3, 8. Asserting claims under the Federal Employers' Liability Act (FELA), the Federal Safety Appliance Acts, and the Boiler Inspection Acts, plaintiff alleges that he suffers from neck injuries which are the result of repeated occupational trauma. Id. ¶¶ 4, 11-12. Defendants filed a motion to transfer venue to the Northern District of Ohio. Because defendants have not made the "strong case for transfer" required in a FELA case, and because the case, which was filed August 17, 2005, is scheduled to be tried before a panel of arbitrators on March 15, 2006, defendants' motion is denied.

Under 28 U.S.C. § 1404(a), a court may transfer a civil action "to any other district or division where it might have been brought." Neither party disputes that this action might have been brought in the Northern District of Ohio, which is where plaintiff resides.[1]

Once a court determines that venue would be proper in another district, the court must consider "all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum." Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995), citing 15 Wright, Miller, & Cooper, Federal Practice and Procedure § 3847 (2d ed. 1986).

Ordinarily, there is a strong presumption in favor of the forum chosen by plaintiff. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981); Bhatnagar v. Surrendra Overseas Ltd., 52 F.3d 1220, 1226 n.4 (3d Cir. 1995); Kielczynski v. Consolidated Rail Corp., 837 F. Supp. 687, 689 (E.D. Pa. 1993) ("In assessing a transfer motion, a court should not lightly disturb plaintiffs' choice of forum."). When the forum chosen is not the plaintiff's home forum, and when no operative facts occurred in the forum, plaintiff's choice is ordinarily given less weight. Piper Aircraft, 454 U.S. at 255-56; Espenlaub v. Consolidated Rail Corp., 1996 WL 57940, at *4 (E.D. Pa. Feb. 9, 1996); Kielczynski, 837 F. Supp. at 689. However, this analysis must be viewed in light of the rule that the plaintiff's choice of forum in a FELA case is a "substantial right." Boyd v. Grand Trunk Western R.R. Co., 338 U.S. 263, 266 (1959) (per curiam); Whigham v. CSX Transp., Inc., 2005 WL 441356, at *1 (E.D. Pa. Feb. 23, 2005). "In an action under FELA . . . the plaintiff's choice of forum should still be given some deference, regardless of the plaintiff's residence or the site of the underlying incident." Luther v. Consolidated

[1]Under FELA's venue provision, 45 U.S.C. § 56, an action may be brought in any district where the defendant was doing business at the time the action is commenced. Defendants and plaintiff both agree that defendants were doing in business in the state of Ohio. Def. Br. at 6; Compl. ¶ 5-6.

Rail Corp., 1999 WL 387075, at *2 (E.D. Pa. May 25, 1999), quoting Espenlaub, 1996 WL 57940, at *4.

In deciding a motion to transfer venue in a FELA case, courts require the movant to spell out "a clear case of convenience, definitely and unequivocally, and to show a strong case for transfer." Richards v. Consolidated Rail Corp., 1994 WL 586009, at *2 (E.D. Pa. Oct. 18, 1994); Coble v. Consolidated Rail Corp., 1992 WL 210325, at *1 (E.D. Pa. Aug. 26, 1992). Defendants' convenience argument is that transfer to the Northern District of Ohio is appropriate because (1) plaintiff lives there, (2) plaintiff's medical records and treating physician are "likely" there, and (3) numerous other "likely" witnesses are located there. Def. Br. at 7-8. The Court concludes that defendants have not "definitively and unequivocally" made out the "clear case of convenience" required to grant a motion to transfer venue in a FELA case.

"When arguing for transfer on the basis of witness availability at trial and witness convenience, movant has the responsibility to specify clearly the key witnesses to be called." Coble, 1992 WL 210325, at *2. In this case, defendants have only identified one key witness, William Klancher, one of plaintiff's former supervisors, who lives in the Northern District of Ohio. Aff. of William Klancher, Def. Ex. D. Identifying only one key witness who lives in the transferee forum is not sufficient to establish a "clear case of convenience." See Coble, 1992 WL 210325, at *2. Furthermore, Mr. Klancher is currently employed by defendants, as are many of the other witnesses defendants expect to call, such as plaintiff's former co-workers. Klancher Aff. ¶ 1. Defendants will presumably be able to obtain testimony from their own employees without resorting to compulsory process. See Richards, 1994 WL 586009, at *2; Coble, 1992 WL 210325, at *2. On this issue, the convenience of defense witnesses is given less weight if the defendant is a transportation company and can easily transport witnesses. Richards, 1994 WL 586009, at *2; Kielczynski, 837 F. Supp. at 689; Coble, 1992 WL

210325, at *3.

Aside from the fact that the Northern District of Ohio is the "likely" location of relevant witnesses and documents, defendants have not identified any other factors making the Northern District a more convenient forum. See Richards, 1994 WL 5896009, at *3. The Court concludes that defendants have not shown "a clear case of convenience, definitely and unequivocally" to warrant transfer to the Northern District of Ohio.

This conclusion is bolstered by the fact that this case is scheduled to proceed to trial before a panel of arbitrators in this court on March 15, 2006. Transferring the case at this time would only delay its resolution, a factor courts may consider when deciding motions to transfer venue. See Jones v. BCJ Trucking, Inc., 1993 WL 183836, at *5 (E.D. Pa. May 27, 1993) ("[A] delay in proceedings and judicial efficiency must be considered with any transfer of venue."); Williams v. Consolidated Rail Corp., 1987 WL 12778, at *3 (E.D. Pa. June 19, 1987) (declining to transfer case because it "would only delay the resolution of this litigation"). In analyzing this factor, the Court notes that, although defendants raised the defense of improper venue in their Answer filed September 12, 2005, they did not file the motion to transfer venue until January 11, 2006, almost four months after the Answer was filed, and two months after the arbitration hearing was scheduled by Notice dated November 16, 2005. While a delay in filing a motion to transfer venue is, by itself, not determinative, this delay in conjunction with defendants' failure to show a clear case of convenience supports the Court's decision to deny the motion to transfer venue. See Harris v. Lewis, 1993 WL 126430, at *5 n.1 (E.D. Pa. Apr. 21, 1993) ("[E]ven if there had been a true year-and-a-half delay in filing this motion, this alone would not estop defendant from seeking a transfer.").

Therefore, because defendants have not made the required showing for transferring a FELA case, and because transferring this case would delay its ultimate resolution, the Court denies

defendants' motion to transfer venue to the Northern District of Ohio.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.